UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

CTS CONSTRUCTION, INC. Employer	:	Case No. 09-RD-187368
and	:	
JAMES D. MONAHAN II Petitioner	:	
and	:	**JAMES MONAHAN'S MOTION FOR RECONSIDERATION**
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, (CWA), LOCAL 4322 Union.	:	

Pursuant to 29 C.F.R. § 102.48 and any and all other provisions of the National Labor Relations Act (the "Act") which would afford petitioner relief, James Monahan ("Monahan") respectfully requests that the National Labor Relations Board ("Board") reconsider its May 31, 2017, Order, and its July 26, 2017, Erratum, which operate together to deny his and CTS Construction, Inc.'s ("CTS" or "Employer") Requests for Review of the Regional Director's administrative dismissal of the Petition for Decertification on November 17, 2016. *See* Order, Case No. 09-RD-187368, May 31, 2017, and Erratum, Case. No. 09-RD-187368, July 26, 2017, attached hereto as **Exhibit A**. Monahan now requests that the Board reconsider its Order and Erratum on the following grounds: (1) the Board made a material error by misapplying the *Poole* framework and relying on inaccurate information to establish that the parties did not bargain for a reasonable amount of time, and (2) even assuming that the parties did not bargain for a reasonable period of time, the Board and the Regional Director failed to hold a hearing to establish a causal

nexus between Monahan's Petition for Decertification and the actions of the Employer, as set forth in *Saint Gobain Abrasives*. *See generally* 342 NLRB 434 (2004).

These grounds present extraordinary circumstances warranting reconsideration of the Board's May 31, 2017 Order and the July 26, 2017 Erratum. *See* Rs. & Regs. of NLRB § 102.48(d)(1) ("A party to a proceeding before the Board may, because of extraordinary circumstances move for reconsideration * * * after the Board's decision and order.").

I. FACTUAL BACKGROUND

On February 10, 2016, the Communications Workers of America (the "Union") and CTS began the collective bargaining process for the purpose of entering into a successor collective bargaining agreement. Ultimately, however, the parties were unable to reach an agreement by the expiration date and the contract expired on February 28, 2016.

A decertification petition was filed on or about April 27, 2016, and the Union subsequently filed several unfair labor practice charges concerning the bargaining process and alleged unlawful conduct related to the decertification petition. The decertification petition was withdrawn and the parties settled the unfair labor practice charges in a settlement agreement dated September 15, 2016, and approved on September 23, 2016 (the "Settlement Agreement"). The Settlement Agreement contains a non-admission clause and calls for a posting period of sixty (60) days, as well as a requirement that the parties meet and bargain.

On November 1, 2016, and during the posting period, Monahan filed a Petition for Decertification ("Monahan's Petition for Decertification"). The Regional Director required both Monahan and CTS to submit a position statement regarding Monahan's Petition for Decertification, which they did. Subsequently, the Regional Director, without holding a hearing or taking any evidence, dismissed Monahan's Petition for Decertification.

II. THE BOARD'S INITIAL DECISION

A. The Majority Opinion (Mark Gaston Pearce and Lauren McFerran)

In its initial decision, the majority found that CTS did not raise a substantial issue warranting review. Although the Board conceded that the Regional Director did not specifically discuss the relevant factors under *Poole*, it determined that the Regional Director's decision was at least consistent with *Poole*. In a footnote, the majority reasoned: "The short amount of time elapsed since the commencement of bargaining, the number of bargaining sessions, the fact that the parties were on the cusp of finalizing an agreement, and the absence of a bargaining impasse *clearly* outweigh any other factors which might suggest that a reasonable period of time to bargain had elapsed." *CTS Constr., Inc.*, 2017 NLRB LEXIS 290, n. 1 (N.L.R.B., May 31, 2017) (emphasis added). In reaching this conclusion, the majority noted that the parties met only once after executing the Settlement Agreement. The majority also found that two factors – "whether the parties were bargaining for an initial agreement and the complexity of the issues being negotiated" – weighed in favor of CTS. *Id.* Nonetheless, the majority denied CTS's Request for Review. *Id.*

B. The Dissenting Opinion (Philip A. Miscimarra)

In his dissent, Chairman Miscimarra vigorously contended that the Regional Director, and in turn, the majority, "fundamentally erred" in failing to consider whether the parties reached a tentative agreement. *Id.* at *3. Chairman Miscimarra further stated that the parties had essentially reached an agreement only contingent upon ratification. Thus, the parties had, by definition, bargained for a reasonable amount of time. *Id.* As a result, the Chairman would have found that the *Poole* factors weighed in favor of CTS, warranting review of the Regional Director's decision. *Id.* As a final consideration, Chairman Miscimarra expressed concerns that refusing to process Monahan's Petition for Decertification would deprive employees of their right to challenge

representation for up to three years because of the contract bar doctrine. *Id.* at *4. Accordingly, Chairman Miscimarra would have granted CTS's Request for Review. *Id.*

C. The Erratum

In its July 26, 2017, Erratum, the Board noted that it failed to rule on Monahan's Request for Review of the Regional Director's administrative dismissal. Accordingly, the Board held that Monahan's request for review was denied. No further analysis was provided.

III. STANDARD OF REVIEW

Pursuant to Section 102.48(d)(1) of the Board's Rules and Regulations, a party may move for reconsideration because of extraordinary circumstances. 29 C.F.R. § 102.48(c). In moving for reconsideration of a Board's decision, the party must "state with particularity the material error claimed and with respect to any finding of material fact, must specify the page of the record relied upon. 29 C.F.R. § 102.48(c).

IV. THE BOARD MADE A MATERIAL ERROR BY RELYING UPON ERRONEOUS INFORMATION AND MISAPPLYING THE *POOLE* FRAMEWORK TO ESTABLISH THAT THE PARTIES DID NOT BARGAIN FOR A REASONABLE AMOUNT OF TIME.

The Board's reliance on erroneous information and its misapplication of the *Poole* framework present extraordinary circumstances warranting reconsideration of its May 31, 2017 Order and its July 26, 2017 Erratum. In determining that CTS did not bargain with the Union for a reasonable period of time after reaching a settlement, the majority erroneously applied the factors established by *Poole* and its progeny, which include: (1) whether parties were bargaining for an initial agreement; (2) the complexity of the issues negotiated and the parties' bargaining procedures; (3) the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the

parties were to agreement; and (5) the presence or absence of a bargaining impasse. *Poole Foundry & Machine Co.*, 95 NLRB 34 (1951), enfd. 192 F.2d 740 (4th Cir. 1951); *see also AT Systems West, Inc.*, 341 NLRB 57, 61 (1989) (citing *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002)).

The improper application of a framework is a material error that constitutes extraordinary circumstances supporting a grant of a motion for reconsideration. *William Wolf Bakery, Inc.*, 122 NLRB No. 89, 2 (1958). Importantly, the Board does not mandate a specific amount of time within which the parties must bargain in good faith after executing a settlement agreement. Rather, the Board requires the period be "reasonable" given the Union's request. *Poole*, 95 NLRB at 50. In determining what is "reasonable" under the circumstances, the Board reviews and considers all of the interactions between the parties during the relevant period of time rather than solely considering the length of time that elapsed. *King Scoopers, Inc.*, 295 NLRB 35, 37 (1989). The determination of a reasonable time for bargaining is fact-sensitive and varies from case to case. *Lee Lumber*, 334 NLRB at 399.

In *Poole*, the company and the union entered into a settlement agreement with a non-admission clause prior to the filing of a decertification petition. *Poole*, 95 NLRB at 35. The decertification petition was filed less than three months after the parties entered into a settlement agreement. *Id.* The Board held that when the parties enter into a settlement agreement requiring bargaining, the employer must honor the bargaining obligation therein for a reasonable period of time. *Id.* The Board found that dismissal of a decertification petition was proper there because the employer refused entirely to bargain with the Union after entering into a settlement agreement. *Id.* Thus, because the employer did not bargain with the Union at all, the bargaining provision in the settlement agreement could not achieve its purpose. *Id.* Therefore, dismissal was proper. *Id.*

Similarly, in *AT Systems West*, the Board found that the employer failed to bargain for a reasonable period of time following a settlement agreement. 341 NLRB at 62. The parties were negotiating their first contract and the issues that were the subject of bargaining were quite complex given it was the first contract. *Id.* at 61. Although the parties had been in negotiations for seventeen months, the Board reasoned that since the employer engaged in unfair labor practices during this period, it could not find that that the parties were at a virtual impasse. *Id.* Although the parties had interacted to some extent after the settlement agreement, not much progress was made in terms of coming to an agreement, as there were still issues with each of the facilities that were the subject of the bargaining. *Id.* Therefore, in applying the factors set forth in *Lee Lumber*, the Board found that a reasonable amount of time had not passed. *Id.*; *accord.*, *King Scoopers, Inc.*, 295 NLRB 35, 38 (reasonable period of time had not passed when the parties did not meet face-to-face over a four-month period and there was no bargaining impasse).

Here, the facts of this case are far different from those outlined above. Unlike in *Poole*, a reasonable time had passed. CTS began bargaining with the Union for a successor contract in February of 2016. After months of bargaining, the Union filed unfair labor practice charges, which were resolved with a non-admission clause in the Settlement Agreement in September. Thereafter, CTS complied with the terms of the Settlement Agreement and bargained in good faith to a tentative agreement with the Union, and Monahan petitioned for decertification free from the influence of an unfair labor practice. Moreover, unlike in *AT Systems West*, the parties were not bargaining for an initial agreement, but instead were bargaining for a successor agreement, which did not require the same amount of bargaining time as would be needed for an initial agreement. The issues negotiated by the parties' – wages – were not complex and did not necessitate a longer period of time to be reasonable under the circumstances. Finally, and most importantly, the parties

were not at a bargaining impasse, but had reached an agreement, subject only to ratification by the Union. The fact that the parties reached an agreement is strong evidence that reasonable time was afforded for bargaining. Based on the foregoing, the *Poole* factors clearly weigh in favor of CTS and Monahan. The Board's finding that a reasonable time for bargaining under the Settlement Agreement had not passed was a material error that constitutes extraordinary circumstances. Accordingly, the Board should grant this motion for reconsideration of the dismissal of Monahan's Petition for Decertification.

V. THE BOARD AND REGIONAL DIRECTOR FAILED TO CONDUCT A CAUSATION HEARING.

In the alternative, if the Board finds that the parties had failed to bargain for a reasonable period of time when Monahan's Petition for Decertification was filed, then the Board and the Regional Director deprived Monahan and other CTS employees of their section 7 rights under the Act by deciding to dismiss the Petition for Decertification without a hearing on causation.

Section 7 provides employees the right to refrain from union representation, and the Act gives employees the right to a decertification election. 29 U.S.C. § 157; *see also* 29 U.S.C. § 159(c)(1)(A)(ii). Before blocking a decertification petition because of an action by an employer, there must be a hearing to establish a causal nexus between the petition and the action of the employer. *Saint Gobain Abrasives*, 342 NLRB 434 (2004). For example, in *Saint Gobain*, the Regional Director dismissed a decertification petition because the employer's alleged failure to bargain in good faith tainted the filing of the petition. 342 NLRB at 434. The Regional Director dismissed the petition without holding a hearing to determine if there was a nexus between the employer's actions and the filing of the petition. *Id.* After the Regional Director's decision, the Board reversed and ordered a hearing on causation. The Board provided: "[I]t is not appropriate

to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights. Surely, a hearing and findings are prerequisites to such a denial." *Id.* Finally, the Board noted that neither it nor the Regional Director could rely on charges that were informally settled since those charges were unproven. *Id.* Accordingly, the Board reversed the dismissal of the decertification petition, reinstated the petition, and remanded the case to the Regional Director. *Id.*

Monahan's Petition for Decertification was dismissed without a hearing to determine causation. Allowing the Petition for Decertification to be processed furthers the intent of the Act, which is to provide employees with the right to choose whether to be represented or not to be represented by a Union. The Board should not further prevent Monahan and others from exercising their free choice to associate or not associate by dismissing Monahan's Petition for Decertification. By allowing a dismissal absent a hearing, the Board would prevent employees with legitimate concerns about their representation from filing petitions simply because an arbitrary period of time had not passed since an unrelated settlement agreement took place between their employer and their union.

Further, when the contract bar doctrine is taken into consideration, this case, and others similarly situated, would result in employees being unable to question their representation for a "reasonable time" after the commencement of bargaining–which, if the majority decision stands, would be until an agreement is finalized. In situations like the instant case, this type of analysis means that employees who are unhappy with their bargaining representative would need to wait another three years to exercise their rights on this issue. A decision that does not permit employees to question their representation for a period of several years is in stark contrast with the purpose of the Act and the protection of worker rights.

Therefore, assuming that a reasonable time for bargaining was not permitted before the filing of the petition, a hearing pursuant to *Saint Gobain* should have been conducted as to the causation between the filing of the petition and the lack of a reasonable time for bargaining. Otherwise, Monahan and other CTS employees will be stripped of their Section 7 rights, without any recourse.

VI. CONCLUSION

This case presents extraordinary circumstances that warrant the Board's reconsideration of its May 31, 2017, Order and July 26, 2017, Erratum. The Board's Order and Erratum do not comply with the framework outlined in *Poole* to establish whether the parties bargained for a reasonable amount of time and the Order relies upon erroneous information in applying and weighing the *Poole* factors. Alternatively, assuming that there was not a reasonable time to bargain, the Board and the Regional Director failed to hold a hearing to establish a causal nexus between Monahan's Petition for Decertification and the actions of CTS as set forth in *Saint Gobain*. Accordingly, Monahan respectfully requests that the Board: (1) grant this Motion for Reconsideration, (2) reinstate his Petition for Decertification, and (3) direct the Regional Director to issue a decision in line with this Board's analysis of the *Poole* factors. Alternatively, Monahan requests that the Board direct that a hearing be held on the issue of causation.

CERTIFICATE OF SERVICE

Pursuant to the Board's Rules and Regulations §§ 102.67(f) and (i)(2), the undersigned hereby certifies that its Motion for Reconsideration was filed electronically with the Office of the Executive Secretary on July 31, 2017. A copy of that filing has been sent to the following individuals via email:

Jeffrey A. Mullins, Taft Stettinius & Hollister, LLP, 40 North Main Street, Suite 1700, Dayton, Ohio 45423, mullins@taftlaw.com.

Rick Setzer, President, CTS Construction, Inc., 6661 Corporate Dr., Cincinnati, Ohio 45242, rsetzer@ctstelecomm.com.

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s/ Bradley C. Smith
Bradley C. Smith

UNITED STATES OF AMERICA
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CTS CONSTRUCTION, INC.
Employer

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JAMES D. MONAHAN II
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COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, (CWA), LOCAL 4322
Union

ORDER

The Employer's Request for Review of the Regional Director's administrative dismissal of the petition is denied as it raises no substantial issues warranting review.[1]

[1] Although the Regional Director did not specifically discuss each of the relevant factors under *Poole Foundry* when assessing whether the parties had bargained for a reasonable period of time when the instant petition was filed, we find that his analysis and conclusions are consistent with *Poole Foundry & Machine Co.*, 95 NLRB 34 (1951), enfd. 192 F.2d 740 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952), and its progeny. Under *Poole Foundry*, the relevant factors are: "whether the parties were bargaining for an initial agreement, the complexity of the issues being negotiated and the parties' bargaining procedures, the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions, the amount of progress made in negotiations and how near the parties were to agreement, and the presence or absence of a bargaining impasse." *AT Systems West, Inc*., 341 NLRB 57, 61 (1989) (citing *Lee Lumber & Building Material Corp*., 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002)). The first two factors - whether the parties were bargaining for an initial agreement and the complexity of the issues being negotiated - weigh in favor of finding that a reasonable period of time to bargain had elapsed. However, all of the remaining factors support the opposite conclusion. The petition in this case was filed only 34 days after the parties entered into a settlement agreement requiring the Employer to post a remedial notice for 60 days and bargain with the Union "until agreement or lawful impasse is reached or until the parties agree to a respite in bargaining." Further, the parties met only one time after the settlement agreement was executed. They made substantial progress in that bargaining session and reached a tentative agreement, conditioned on ratification. "[T]he Board has long declined to hold that a reasonable period for bargaining has elapsed in situations where parties were on the cusp of finalizing an agreement." *Americold Logistics, LLC,* 362 NLRB No. 58, slip op. at 5 (2015) (finding that reasonable period for

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., May 31, 2017

Chairman Miscimarra, dissenting:

In this case, my colleagues find that the Regional Director properly dismissed a decertification petition filed five weeks after the Employer and the Union entered into a settlement agreement that included a bargaining provision. Contrary to my colleagues, I believe that the Requests for Review raise substantial issues warranting review with respect to this action.

On February 10, 2016,[1] the Employer and Union began bargaining for a successor collective-bargaining agreement but were unable to reach agreement prior to the expiration of their contract on February 28. On or about April 27, an employee filed a decertification petition. The Union immediately filed unfair labor practice charges alleging that the Employer had not bargained in good faith and had aided the decertification petition, and requested that the Region block the petition. On May 2, the Regional Director granted the Union's blocking request; the petition was voluntarily withdrawn on September 8.

On September 23, the Employer and Union entered into a settlement agreement whereby the Employer was required to post a remedial notice for 60 days and bargain with the Union for a minimum of 18 hours per month over several six-hour sessions. The settlement agreement provided that bargaining would continue until the parties reached agreement, lawful impasse, or until the parties agreed to a break in bargaining. The Employer posted the notice on October 4, and the parties scheduled their first bargaining session for October 25. Although not mentioned

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bargaining had not elapsed where parties had "finalized a written agreement" and the union had scheduled a ratification vote). See also *Lee Lumber*, 334 NLRB at 404 ("One of the best indicators of success in collective bargaining is reaching a contract. When negotiations have nearly produced a contract, it is reasonable that the parties should have some extra time in which to attempt to conclude an agreement."). The short amount of time elapsed since the commencement of bargaining, the number of bargaining sessions, the fact that the parties were on the cusp of finalizing an agreement, and the absence of a bargaining impasse clearly outweigh any other factors which might suggest that a reasonable period of time to bargain had elapsed.

Member McFerran notes that the dismissal of the petition is also consistent with *Hertz Equipment Rental Corp.*, 328 NLRB 28 (1999), where the Board applied the rule that no question concerning representation can be raised during the posting period of a settlement agreement.

[1] All dates are in 2016 unless stated otherwise.

by the Regional Director, the Requests for Review indicate that the Employer and Union reached a tentative agreement on October 25, which was reduced to writing and submitted to the Union on October 28 and agreed to by the Union subject to a planned ratification vote.[2] The Employer's Request for Review further indicates that the principal issue negotiated was wages. On November 1, the Petitioner filed the instant decertification petition, which the Regional Director summarily dismissed on the grounds that the parties had not been afforded a reasonable period of time to bargain following the settlement agreement. The Regional Director reasoned that the petition was filed after the execution and approval of the settlement agreement, within the 60-day notice posting period, and just seven days after the parties' first post-settlement negotiating session.

Under the Board's settlement bar doctrine, as stated in *Poole Foundry & Machine Co.*, 95 NLRB 34 (1951), enfd. 192 F.2d 740 (4th Cir. 1951), and its progeny, an employer that enters into a settlement agreement requiring it to bargain with a union must bargain for a reasonable period of time before the union's majority status can be questioned. In deciding whether the parties have bargained for a reasonable period of time, the Board considers the following five factors: whether the parties were bargaining for an initial agreement; the complexity of the issues negotiated and the parties' bargaining procedures; the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions; the amount of progress made in negotiations and how near the parties were to agreement; and the presence or absence of a bargaining impasse. *AT Systems West, Inc.*, 341 NLRB 57, 61 (1989) (citing *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002)).

I believe that the Requests for Review have raised substantial issues regarding the Regional Director's application of *Poole.* As indicated above, the Regional Director only considered the amount of time that had elapsed since the settlement agreement was executed. Thus, the Regional Director gave no weight to the fact that the parties were not negotiating an initial contract, a factor that favors processing the petition under *Poole*. The Regional Director also gave no consideration to the complexity of the issues negotiated, as *Poole* requires. As noted, the Employer's Request for Review indicates that the issues were not complex. And the Regional Director fundamentally erred in failing to consider whether, as the Requests for Review indicate, the parties have reached a tentative agreement. As the Board stated in *Poole*, "a settlement agreement containing a bargaining provision, if it is to achieve its purpose, must be treated as giving the parties thereto a reasonable time *in which to conclude a contract*." 95 NLRB at 36 (emphasis added). If, as the Requests for Review assert, the parties reached a tentative agreement, then the settlement agreement has *already* accomplished its purpose and the decertification petition should be processed.

My colleagues acknowledge, contrary to the Regional Director, that the first two *Poole* factors – whether the parties were negotiating an initial contract and whether the issues being negotiated are complex—weigh in favor of finding that a reasonable period of time to bargain *has* elapsed. But they contend that the remaining *Poole* factors require a finding that no such

[2] The Union's brief in opposition to the Requests for Review does not dispute the existence of a tentative agreement.

reasonable period has passed. In particular, they contend that the fact that the parties were "on the cusp of finalizing an agreement" indicates that a reasonable period of time for bargaining has not elapsed. I respectfully disagree.

As discussed at the outset, the Employer and Union apparently reached a tentative agreement on a successor collective-bargaining agreement on the day of their first scheduled bargaining session. This agreement was allegedly contingent only on ratification by the Union; there is no indication that it was contingent on further bargaining, or agreement, on any other matters. In these circumstances, I believe that the majority errs in finding that the parties were merely "on the cusp of finalizing an agreement." To the contrary, they had reached an agreement, subject only to ratification by the Union's members, and concluded negotiations.[3] To the extent that such an agreement exists, a reasonable period for bargaining must necessarily have elapsed. See *Americold Logistics, LLC*, 362 NLRB No. 58, slip op. at 12 (2015) (Member Miscimarra, dissenting) (finding that a decertification petition should be processed because a reasonable period of time for bargaining had elapsed at the point the parties signed an agreement).[4] As I explained in *Americold Logistics*, this conclusion is compelled by Section 8(d) of the Act, which defines the duty to "bargain collectively" as "the *performance* of the mutual obligation of the employer and the representative of the employees to *meet at reasonable times* and *confer in good faith* . . . and the *execution of a written contract incorporating any agreement reached* if requested by either party" (emphasis added). Once such an agreement is reached, the Union cannot possibly establish that further bargaining is required. Id.[5]

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[3] It may be the case that the parties' agreement did not satisfy the Board's contract bar standards at that time, but this circumstance, even if true, has no bearing on whether the *Poole* factors support processing the petition.

[4] See also *King Soopers, Inc.*, 295 NLRB 35, 37 (1989) (internal citation omitted) (Board should focus on "what transpires during the time period under scrutiny rather than the length of time elapsed").

[5] Particularly in these circumstances, the Regional Director erred insofar as he relied on the fact that the petition was filed during the notice-posting period for the settlement agreement. In *Hertz Equipment Rental Corp.,* 328 NLRB 28 (1999), a Board majority, over a dissent by former Member Brame, stated that no question concerning representation can be raised during the notice-posting period. But the Board majority offered no justification for its view other than citing to *Freedom WLNE-TV,* 295 NLRB 634 (1989), a case that offers no support for the per se rule *Hertz* espouses. Instead, the Board found a settlement bar in *Freedom WLNE-TV* because there had been no post-settlement bargaining prior to the filing of a decertification petition. Here, there was not only post-settlement bargaining but, according to the Requests for Review, a post-settlement agreement.

Consistent with Member Brame's dissent in *Hertz Equipment*, supra, I believe that the Board should engage in a "case-by-case analysis" of decertification petitions rather than applying "an automatic dismissal [rule that] fails to consider the Sec[.] 7 rights of [] employees." Such individualized attention is particularly important in cases such as this where the parties have reached a tentative agreement and there is a history of decertification attempts.

Furthermore, as in *Americold Logistics*, supra, I find that the Board's refusal to process this petition unjustifiably denies the employees the opportunity to express their wishes concerning continued representation. As noted above, a prior decertification petition was blocked by charges filed by the Union that were resolved by a settlement agreement. If the instant decertification petition is not processed, and the Employer and Union execute a written agreement that satisfies the requirements of the contract bar doctrine, the employees will be denied that opportunity for an additional period of up to three years. See *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). I believe the instant case illustrates the fact that the Board's blocking charge doctrine results in unfairness to the parties and, in the circumstances presented here, does violence to the Act's basic charge that the Board "in each case" ensure parties have "the fullest freedom in exercising the rights guaranteed by [the] Act." Sec. 9(b). I continue to favor reconsideration of the Board's blocking charge doctrine for the reasons expressed in the dissenting views that were contained within the Board's representation election rule, 79 Fed. Reg. 74308, at 74430-74460 (Dec. 15, 2014) (dissenting views of Members Miscimarra and Johnson).

For these reasons, I respectfully dissent.

PHILIP A. MISCIMARRA, CHAIRMAN,

To: Bradley C. Smith, Esq.
Matthew R. Harris
Jeffrey A. Mullins, Esq.
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Attached is a Board Erratum in above-subject case.

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ERRATUM

The Order that issued on May 31, 2017, failed to include that the Petitioner's Request for Review of the Regional Director's administrative dismissal of the petition is also denied. Accordingly, both the Employer's and Petitioner's requests for review are denied.

Dated, Washington, D.C., July 26, 2017.

/s/ Farah Z. Qureshi
Associate Executive Secretary